

## **103 KAR 17:010. Residence.**

RELATES TO: KRS 141.020

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation provides guidelines for determining whether a person qualifies as a resident or nonresident for Kentucky income tax purposes and provides special instruction to cover some of the more common problem areas.

Section 1. Resident. "Resident" means any individual domiciled within Kentucky on the last day of the taxable year and includes any individual who spends more than 183 days in Kentucky and maintains a place of abode in Kentucky during this period. All other individuals are nonresidents.

Section 2. Nonresident Requirements. To qualify as a nonresident, the taxpayer shall submit proof of his bona fide intention to reside permanently elsewhere before the last day of the taxable year, and that he has spent less than 183 days in Kentucky. If any person who has moved out of Kentucky returns to Kentucky within six (6) months from the time he had moved, it shall be construed that the removal from Kentucky was not intended to be permanent and such person shall be considered a resident during the time in which his abode may have been elsewhere. Any person changing his domicile during a taxable year may also be required to furnish evidence of compliance with requirements of the other state with respect to taxation and qualifications as a resident citizen. Persons residing in Kentucky and living part of the year in other states will be considered residents of Kentucky unless it can be shown that abode in another state is of permanent nature, and that less than 183 days were spent in Kentucky.

Section 3. Domicile. Generally, a domicile is the place where an individual has established permanent resident. A domicile once obtained continues until a new one is acquired. Domicile is not changed by removal for a definite period or for incidental purposes. To constitute a change, there must be intent to change, actual removal, and a new abode.

Section 4. Nonresident Citizens. An individual residing in a foreign country who is permitted to file federal income tax returns as a nonresident citizen, and who immediately prior to residing in a foreign country was domiciled in Kentucky, is presumed to be a Kentucky resident and is required to file a resident Kentucky income tax return. Such individual may, however, overcome this presumption by presenting sufficient evidence that the Kentucky domicile has been abandoned.

Section 5. Federal Employees. Federal employees working outside of Kentucky but having a domicile in Kentucky are taxable as residents. Such persons, once domiciled in Kentucky, are considered Kentucky residents if a domicile has not been established elsewhere. If the individual's domicile is claimed to be outside Kentucky, the requirements of Section 3 of this administrative regulation must be met.

Section 6. Military Personnel. Under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended, a member of the Armed Forces retains the domicile which he had when he entered military service. Persons domiciled in Kentucky at the time of induction will continue to be liable for the payment of Kentucky income taxes on all income regardless of where their military services are performed. However, military personnel (usually career personnel) may change their domicile from Kentucky to another state as any other individual. Conclusive evidence must be submitted showing that their Kentucky domicile has been abandoned and a new domicile established in another state.

Section 7. Reciprocity States. (1) Kentucky has reciprocal tax agreements with the states of Indiana, Illinois, Michigan, Ohio, Virginia, West Virginia, and Wisconsin. These agreements provide that salaries and wages earned in Kentucky by residents of those states are exempt from Kentucky income tax. Kentucky residents are exempt from income tax, imposed by such states, on salaries and wages earned there. The Virginia Agreement, however, applies only to taxpayers who commute daily to their employment in the nonresident state.

(2) A Kentucky resident, working in one (1) of the states listed above, must file the required certificate of nonresidence with his employer. That certificate is the employer's authority to exempt the employee's income from withholding. A resident of a state listed above must file Revenue Form 41A809, Certificate of Nonresidence, with his Kentucky employer to exempt his income from Kentucky withholding. (II-1-1; 1 Ky.R. 328; eff. 2-5-75; Am. 10 Ky.R. 43; eff. 8-3-83.)